

FILE/DIRECTION/ORDER

BEFORE JUDGE

MYERS

ACTION #

CV-17-11822-CL

KSV KOFMAN INC. et al

Plaintiff(s)

v.

AEOLIAN INVEST. LTD et al.

Defendant(s)

CASE MANAGEMENT: YES ☐ NO ☐

COUNSEL:

PHONE NO.

PHONE NO.

PHONE NO.

☐ ORDER ☐ DIRECTION FOR REGISTRAR

☐ REPORTED SETTLED ADJOURNED TO TRIAL SCHEDULING COURT

☐ NO ONE APPEARED ADJOURNED TO TO BE SPOKEN TO COURT

THE DS OBJECT TO MY ENDORSEMENT AWARDEDING
SUBSTANTIAL INDEMNITY COSTS TO TS BEFORE
THEY HAD AN OPPORTUNITY TO MAKE SUBMISSIONS.
THE COSTS AWARD IS SET ASIDE.
I HAVE THE DS' SUBMISSIONS NOW ON THE
MERITS. THEY ARGUE THAT COSTS SHOULD BE
IN THE CASE TO AVOID ENDING THE LITIGATION.

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MR. DAVIES' EVIDENCE IS THAT HE HAS NO ASSETS TO FUND AN ORDER FOR COSTS. BUT THAT'S THE WHOLE POINT OF THE LITIGATION. TIS ALLEGED THAT HE IMPROPERLY DEALT WITH INVESTOR FUNDS TO ENRICH HIMSELF, HIS FAMILY, THEIR TRUSTS, AND OTHERS RATHER THAN BUILDING BUILDINGS. ALTHOUGH HE DISPUTES THE MERITS, I FOUND THAT HIS OWN DESCRIPTION OF HIS BUSINESS MODEL WAS ASKIN TO A PONZI SCHEME. I FOUND THAT THERE WAS A REAL RISK OF ~~ASSETS~~ DISSIPATION OF ASSETS GIVEN THAT HE & MRS. DAVIES HAVE SOLD THEIR COTTAGE AND TRIED TO SELL THEIR HOUSE IN FALT OF THE MAREVA INJUNCTION. THE FACTS THAT CORPORATE FUNDS MAY NOW BE IN A PROPERTY IN AZ. IN THE NAME OF A TRUST AND THAT MR DAVIES IS SO FORTUNOUS TO HAVE A WILLING LEADER - WHO ADVANCES FUNDS TO HIM DESPITE HIS

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ALLEGED LACK OF ASSETS – AND THAT THE LENDER IS NOT A BANK OR A FINANCIAL PLAYER BUT JUST HAPPENS TO BE THE ARCHITECT OF NON-BUILT BUILDINGS – WAS MORE THAN SUSPICIOUS.

MR DAVIES ARGUES THAT HE HAS COMMITTED NO REPREHENSIBLE CONDUCT TO ATTRACT A PUNITIVE LEVEL OF COSTS. I DO NOT AGREE. THE EVIDENCE

AGAINST HIM RAISES A STRONG CASE THAT ~~HE~~ HIS DEFENCE IS A SHAM AND HIS BEHAVIOUR INDEED IS SCANDALOUS. IN FACT THERE IS A PUBLIC SCANDAL THAT HAS RECEIVED NOTARIETY.

I DO NOT ACCEPT THAT MR DAVIES DOES NOT HAVE ACCESS TO FUNDS TO PAY A COSTS AWARD. HE HAS NOT SOUGHT TO LIFT THE MAREVA TO FUND LEGAL OR LIVING EXPENSES DESPITE SEVERAL MONTHS UNDER ITS TERMS. HIS ABILITY TO BORROW AND PAY LIVING AND

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LEGAL EXPENSES APPEARS TO RELIE COUNSEL'S SUBMISSION.

I DO NOT SEE THIS AS A CLOSE CALL. THE THRAUST OF DS' SUBMISSIONS IS TO RE-ASSERT EVIDENCE THAT I REJECTED ON THE MERITS ALREADY.

I HAVE APPROACHED THE MATTER ANEW BUT FIND MYSELF REACHING THE SAME CONCLUSION BASED ON (a) MY FINDINGS ON THE MOTION; (b) CONSIDERING DS' SUBMISSIONS; AND (c) CONSIDERING S. 131 CJA, R. 57.01, AND ROUCHER CONSIDERATIONS – ESPECIALLY ACCESS TO JUSTICE FOR ALL INTERESTED PARTIES.

THE TT RELIES AS WELL ON MR DAVES' EFFORTS TO DENY LIABILITY INCLUDING PRODUCING NEW VERSIONS OF FINANCIAL RECORDS THAT DIFFER FROM CONTEMPORANEOUS RECORDS AS AN INDICATION

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THAT HIS RESPONSE TO THE MOTION UNREASONABLY
RAISED COSTS AND LENGTHENED THE LITIGATION.
IT POINTS^{OUT} AS WELL THAT IT HAS CALCULATED
ITS COSTS AT 50% RATHER THAN 90%
OF FULL FEES AS IS ALLOWED FOR SUBSTANTIAL
INDEMNITY CLAIMS. THE AWARD IS THEREFORE A
HYBRID RATHER THAN A MAXIMUM. FINALLY
I ~~BE~~ ACCEPT THAT THE RECEIVER/IT HAD TO
PERFORM VERY SUBSTANTIAL EFFORT TO
UNRIDDLE THE FINANCIAL WEB WOVEN BY
MR DAVIES IN THE BORROWER CORPORATIONS
AND THEIR DEALINGS WITH THE Ls. IN THE
CIRCUMSTANCES COSTS ~~WAS~~ CLAIMED OF
\$61,782.82 all-in ~~ARE~~ ARE FAIR AND REASONABLE.
COSTS OF \$61,782.82 ARE PAYABLE BY
JOHN DAVIES, JUDITH DAVIES, AND AEOLIAN
INVESTMENTS LTD JOINTLY AND SEVERALLY TO
THE TT FIXED AT \$61,782.82 ALL-IN PAYABLE
WITHIN 30 DAYS. UNLIKE MY PRIOR ORDER, NO COSTS
ARE AWARDED AGAINST THE OTHER Ls.

DATE: Oct 3/17

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